DP Vijandran v Majlis Peguam

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W–02–182–1995
GOPAL SRI RAM, NH CHAN JJCA AND AHMAD FAIRUZ J
23 NOVEMBER 1995

Legal Profession *— Practice of law — Application for sijil annual — Advocate and solicitor convicted of criminal offence — Whether Bar Council has power to refuse to issue sijil annual — Whether power confined to situations set out in s 33 — Meaning of 'order of committal' — Whether only refers to contempt of court — Legal Profession Act 1976 s 33*

Legal Profession *— Practice of law — Application for sijil annual — Refusal of Bar Council to issue sijil annual — Whether High Court has original jurisdiction to decide if sijil annual should be issued — Whether High Court bound by decision of Bar Council — Legal Profession Act 1976 s 34*

Legal Profession *— Malaysian Bar — Powers — Abuse of power — Refusal of practising certificate on ground of conviction of applicant — Whether abuse of licensing power as means of disciplining advocate and solicitor — Whether decision arrived at a nullity — Legal Profession Act 1976*

Statutory Interpretation *— Construction of statutes — Technical language — Intention of Parliament — Court to interpret terminology in statute in its technical legal sense unless there is express contrary intention*

Statutory Interpretation *— Canons of construction — Noscitur a sociis — Meaning of phrase determined by surrounding words*

Statutory Interpretation *— Canons of construction — Generalia specialibus non derogant — Specific provisions to oust general provision — Legal Profession Act 1976 ss 33 & 57(c)*

The appellant, an advocate and solicitor of the High Court of Malaya, was convicted of an offence under s 193 of the Penal Code (FMS Cap 45) by the Ipoh Sessions Court on 6 May 1994, for fabrication of evidence that was presented to a court in civil proceedings in which he was a litigant. He appealed against the conviction and was granted a stay of execution of the sentence passed. On 15 September 1994, the appellant applied to the respondent for a sijil annual to enable him to obtain a practising certificate for the year 1995. The respondent refused to issue him a sijil and communicated its decision to the appellant by a letter dated 20 October 1994. The appellant then took out an originating summons for an order directing the respondent to issue him with a sijil annual under the provisions of s 34 of the Legal Profession Act 1976 ('the LPA') but the application was dismissed by the High Court. The appellant then appealed to the Court of Appeal. The respondent relied on s 33(1)(h) of the LPA to justify its refusal to issue the sijil annual on the ground that the appellant had

A been 'committed' to prison for his offence as he had been sentenced to a term of imprisonment. The issues before the court were: (i) the construction to be placed on s 33(1)(h) of the LPA; and (ii) the respondent's claim to a much wider power to refuse the issuance of sijil annuals generally based upon s 57(c) of the LPA and the case of *Yip Shou Shan v Majlis Peguam* [1994] 3 MLJ 82.

B

Held, allowing the appeal:

(1) When Parliament enacts a law which uses technical legal language, it is taken as using that language in its technical legal sense. Where a contrary intention is intended, there will usually be a specific definition of the term within the Act. Therefore, a court must interpret the terminology in s 33(1)(h) in its legal sense as used and understood in the general law. Also, the principle *noscitur a sociis* requires that a word or phrase appearing in a statute must fall to be judged by the company in which it is to be found. Therefore, the expression 'order of committal' in s 33(1)(h) takes its colour from the expression 'writ of attachment' to which it is joined by the conjunction 'or'.

(2) The expressions 'order of committal' or 'writ of attachment' are, in technical peculiarity, associated with the law of contempt. Therefore, they ought to be read as referring to a situation in which an advocate and solicitor has been punished for committing contempt of court. The respondent's suggestion that the words 'order of committal' should be widely construed so as to include a conviction cuts across well-settled principles of construction and does violence to the language used by Parliament.

(3) Through s 34 of the LPA, Parliament intended to confer upon a judge of the High Court an original jurisdiction upon the question whether a sijil annual ought to be issued in a particular case. When exercising that original jurisdiction, the judge is not fettered by any prior decision of the respondent. He is entitled to take into account the respondent's reasons but he is not bound by them. He must consider all the material before him and decide whether the particular applicant should have a sijil annual. What is of paramount importance that s 34 provides for a special statutory remedy that is to be granted according to the circumstances of each case.

(4) The respondent being a creature of statute only has the powers conferred upon it by the LPA. Its general powers to manage and administer its affairs are found in Pt V, in particular ss 56 and 57, whereas the specific licensing power is found in Pt III, which includes ss 32–34. Where an Act contains a general provision which covers a situation in respect of which a specific provision exists elsewhere in the enactment, the general provision is presumed to give way to the more specific provision following

the maxim *generalia specialibus non derogant*. Therefore, the general words of s 57(c) which seem to support the existence of a power in the respondent to refuse to issue a sijil annual must give way to the specific provisions of s 33.

(5) The reference made in *Yip Shou Shan* that the respondent has the power to refuse to issue a sijil annual on the grounds of public interest was made only in the context of the inability of an advocate and solicitor to deliver a clean accountant's certificate in respect of his client's account. It was thus apparent that the respondent's claim to a wider power could not succeed.

(6) The appellant's accounts were all admittedly in order, yet the respondent refused to issue him with a sijil annual due to his conviction. This had the effect of disciplining him by a body that distinctly lacked that power, and the respondent's refusal had suspended the appellant from practising his profession. The licensing power in ss 32 and 33 was used as a means of disciplining the appellant without having resort to the specific provisions in the LPA for the discipline of advocates and solicitors. As the statutory power was used for a collateral purpose, it was an abuse of power and the decision arrived at was consequently a nullity.

[Bahasa Malaysia summary

Perayu, seorang peguambela dan peguamcara Mahkamah Tinggi Malaya, telah disabitkan atas kesalahan di bawah s 193 Kanun Keseksaan (NMB Bab 45) di Mahkamah Sesyen Ipoh kerana mereka-reka keterangan yang dikemukakan di mahkamah dalam prosiding sivil di mana beliau menjadi litigan. Beliau membuat rayuan terhadap sabitan itu dan diberi penggantungan pelaksanaan hukuman yang dijatuhkan. Pada 15 September 1994, perayu memohon kepada penentang untuk sijil annual untuk membolehkannya mendapatkan perakuan amalan untuk tahun 1995. Penentang enggan mengeluarkan sijil kepadanya dan menyampaikan berita mengenai keputusannya kepada perayu melalui surat bertarikh 20 Oktober 1994. Perayu kemudiannya mengeluarkan suatu saman pemula untuk mendapatkan perintah supaya penentang diarah mengeluarkan kepada beliau suatu sijil annual di bawah peruntukan s 34 Akta Profesion Undang-Undang 1976 ('APU') tetapi permohonan itu telah ditolak oleh Mahkamah Tinggi. Perayu kemudiannya membuat rayuan kepada Mahkamah Rayuan. Penentang bergantung pada s 33(1)(h) APU untuk menjustifikasi keengganannya untuk mengeluarkan sijil annual itu atas alasan bahawa perayu telah 'dikomit' ke penjara atas kesalahannya kerana beliau telah dijatuhkan hukuman pemenjaraan. Isu di hadapan mahkamah ialah: (i) pentafsiran yang patut diberikan kepada s 33(1)(h) APU; dan (ii) tuntutan penentang bahawa ia mempunyai kuasa yang jauh lebih luas untuk menolak pengeluaran sijil annual berdasarkan s 57(c) APU itu dan kes *Yip Shou Shan v Majlis Peguam* [1994] 3 MLJ 82.

Diputuskan, membenarkan rayuan itu:

(1) Apabila Parlimen menggubal sesuatu undang-undang yang menggunakan bahasa undang-undang yang teknikal, ia diambil sebagai menggunakan bahasa itu mengikut maksudnya yang teknikal. Di mana suatu niat bertentangan dimaksudkan, biasanya akan terdapat suatu definisi khusus untuk terma itu di dalam Akta tersebut. Oleh itu, suatu mahkamah mesti mentafsirkan istilah di dalam s 33(1)(h) mengikut maksudnya di sisi undang-undang sepertimana ia digunakan dan difahami mengikut undang-undang am. Juga, prinsip *noscitur a sociis* menghendaki supaya suatu perkataan atau ungkapan yang terdapat di dalam suatu statut mesti ditafsirkan mengikut perkataan lain yang terdapat dengannya. Oleh yang demikian, ungkapan 'perintah komital' di dalam s 33(1)(h) mengambil maksudnya daripada ungkapan 'writ penahanan' dengan mana ia disambungkan melalui perkataan 'atau'.

(2) Ungkapan 'perintah komital' atau 'writ penahanan' adalah mengikut keunikan teknikal, berkaitan dengan undang-undang penghinaan. Oleh itu, mereka patut dibaca sebagai merujuk kepada keadaan di mana seorang peguambela dan peguamcara telah dihukum kerana melakukan penghinaan mahkamah. Cadangan penentang bahawa perkataan-perkataan 'perintah komital' harus diberikan tafsiran luas supaya termasuk suatu sabitan, adalah melanggar prinsip-prinsip pentafsiran yang mantap dan merosakkan bahasa yang digunakan oleh Parlimen.

(3) Melalui s 34 APU, Parlimen berniat untuk memberikan kepada hakim Mahkamah Tinggi bidang kuasa asal berkenaan dengan soalan sama ada sijil annual harus dikeluarkan di dalam sesuatu kes. Apabila menjalankan bidang kuasa asal tersebut, hakim tidak dihadkan oleh sebarang keputusan penentang yang terdahulu. Beliau berhak mengambil kira sebab-sebab penentang tetapi tidak terikat dengannya. Beliau mesti mengambil kira semua bahan di hadapannya dan memutuskan sama ada pemohon itu sepatutnya diberikan sijil annual itu. Apa yang terpenting sekali ialah bahawa s 34 memperuntukkan remedi statutori yang khas yang harus diberikan mengikut keadaan setiap kes.

(4) Penentang ditubuhkan melalui statut dan hanya mempunyai kuasa yang diberikan oleh APU. Kuasa amnya untuk mengurus dan mengendalikan halnya terdapat di dalam Bah V, terutamanya ss 56 dan 57, manakala kuasa pelesenan yang spesifik pula terdapat di dalam Bah III, yang termasuk ss 32–34. Di mana suatu Akta mempunyai peruntukan am yang merangkumi situasi di mana terdapat peruntukan spesifik di bahagian lain enakmen itu, peruntukan am itu dianggap sebagai memberi jalan kepada peruntukan yang lebih spesifik mengikut maxim *generalia specialibus non derogant*. Maka, perkataan am dalam s 57(c) yang nampaknya menyokong kewujudan kuasa penentang untuk menolak permohonan untuk sijil annual mestilah memberi jalan kepada peruntukan spesifik s 33.

(5) Rujukan yang dibuat di dalam *Yip Shou Shan* bahawa penentang mempunyai kuasa untuk menolak permohonan bagi sijil annual atas alasan kepentingan awam hanya dibuat dalam konteks kegagalan peguambela dan peguamcara untuk menyampaikan satu perakuan akauntan yang bersih berkenaan dengan akaun kliennya. Maka, adalah jelas tuntutan responden bahawa ia mempunyai kuasa yang lebih luas tidak boleh berjaya.

(6) Akaun-akaun perayu semuanya diakui adalah teratur, tetapi penentang masih enggan mengeluarkan kepada beliau sijil annual kerana sabitannya. Ini mempunyai kesan mendisiplin perayu oleh badan yang sebenarnya tidak mempunyai kuasa itu dan keengganan penentang telah menggantung perayu daripada menjalankan profesionnya. Kuasa pelesenan di dalam ss 32 dan 33 telah digunakan sebagai cara mendisiplinkan perayu tanpa mengikut peruntukan spesifik di dalam APU untuk mendisiplinkan peguambela dan peguamcara. Oleh kerana kuasa statutori itu telah digunakan untuk tujuan kolateral, ia merupakan suatu penyalahgunaan kuasa dan akibatnya, keputusan yang dicapai adalah dibatalkan.]

[*Editorial Note*: The respondent has applied for leave to appeal to the Federal Court vide Civil Application No 08–78–95.]

Notes

For cases on the Malaysian Bar, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1452–1457.

For cases on the practice of law, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1495–1526.

For cases on construction of statutes, see 11 *Mallal's Digest* (4th Ed) paras 1308–1368.

For cases on canons of construction, see 11 *Mallal's Digest* (4th Ed) paras 1286–1302.

Cases referred to

Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531 (folld)

Davies & Jones v State of Western Australia (1904) 2 CLR 29 (folld)

G's Application for a Committal Order, Re [1954] 1 WLR 1116 (refd)

Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd [1991] 2 MLJ 311 (refd)

Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135 (refd)

Reserve Bank of India v Peerless General Finance and Investment Co Ltd AIR 1987 SC 1023 (folld)

Seloga Jaya Sdn Bhd v Pembenaan Keng Ting (Sabah) Sdn Bhd [1994] 2 MLJ 97 (folld)

Twenty First Century Oils Sdn Bhd v Bank of Commerce (M) Bhd & Ors (No 1) [1993] 2 MLJ 306 (folld)

A *Westminster Corp v London and North Western Rly Co* [1905] AC 426 (refd)
Yip Shou Shan v Majlis Peguam [1994] 3 MLJ 82 (distd)

Legislation referred to

B Legal Profession Act 1976 ss 32, 33, 34, 56, 57
National Land Code 1965
Penal Code (FMS Cap 45) s 193
Rules of the High Court 1980 O 52 r 1
Rules of the Supreme Court 1957 O 44 r 2
Subordinate Courts Act 1948 Third Schedule para 7, 9(1)
C Subordinate Courts Rules 1950 O 38
Administration Act 1903 [WA]
Rules of the Supreme Court 1883 [UK]

Appeal from: Originating Summons No 17–53–1994 (High Court,
D Kuala Lumpur)

Muhammad Shafee Abdullah (*Shafee & Co*) for the appellant.
Haji Sulaiman Abdullah (*Shamini Mahadevan* with him) (*Zain & Co*) for the respondent.

E *Cur Adv Vult*

Gopal Sri Ram JCA (delivering the judgment of the court): This is an appeal against the refusal by the High Court of an application made to it under the provisions of s 34 of the Legal Profession Act 1976 ('the LPA').
F The matter arose in this way.

The appellant is an advocate and solicitor of the High Court in Malaya. He was admitted and enrolled as such on 28 January 1968. On 6 May 1994, he was convicted of an offence under s 193 of the Penal Code (FMS Cap 45) by the Sessions Court at Ipoh. It was for fabrication of evidence that was presented to a court in civil proceedings in which he was
G a litigant. He has appealed against that conviction and has been granted a stay of execution of the sentence that was passed upon him.

On 15 September 1994, the appellant applied, in the usual way, to the respondent for a sijil annual to enable him to obtain a practising certificate for the year 1995. It is common ground that his clients' account
H is in order and that there is nothing on that count to warrant a withholding of the sijil. Nevertheless, the respondent decided not to issue him a sijil. It communicated its decision to the appellant by a letter dated 20 October 1994. That letter reads as follows:

I Bar Council

20 October 1994

Saudara DP Vijandran
Messrs DP Vijandran & Associates
5th Floor, Wisma Yakin

Jalan Masjid India
50100 Kuala Lumpur

Saudara

Re: Sijil Annual 1995

Thank you for your letter dated 15 September 1991 enclosing your application for sijil annual 1995.

We regret to inform you that the Bar Council cannot issue you with the sijil annual in view of your recent conviction which does not appear to be reflected in your application form and contradicts declaration (b).

In the circumstances, we return herewith your application and draw your attention to s 34 of the Legal Profession Act regarding the necessary application to court.

Yang ikhlas
—Sgd—
Haji Sulaiman bin Abdullah
Setiausaha Kehormat
Majlis Peguam

The appellant then wrote on 31 October 1994 urging the respondent to reconsider its decision. That letter is in the following terms:

DP Vijandran Associates
Advocates and Solicitors
5th Floor, Wisma Yakin
Jalan Masjid India
50100 Kuala Lumpur

31 October 1994

The Honorary Secretary
Bar Council
Kuala Lumpur.

Dear Sir

Re: Sijil Annual for 1996

Thank you for your letter dated 20 October 1994 which I received on 25 October 1994.

I write this letter to request you to reconsider the decision not to issue the sijil annual to me.

Let me first address the statement in the second para of your letter. That the declaration (b) endorsed on the form appears to be not statutorily required is one issue. Over and above that, I sincerely believe that the conviction referred to does not render me unfit to be a member of my profession.

In the first place, the matter is on appeal to the High Court. Secondly, it was contended by the prosecution itself that under s 193 (second limb) of the Penal Code 'it is not necessary for the prosecution to prove: (a) that when making the statement, the accused knew it to be false; (b) that he made such false statement intentionally'. As such a conviction under that

section does not automatically render a person unfit to be a member of the Bar.

Secondly, I have complied with all the requisites under the Legal Profession Act 1976 for the issuance of the sijil annual. It is my view that the Bar Council is not empowered to withold the issuance of such sijil.

I advance the above views not to create attrition but to ask that my case be considered fairly. As you will appreciate, I am loathe to make an application under s 34 unless you present me with no alternatives. Such an application by me will attract media attention and will damage my practice and ability to represent existing clients regardless of the outcome of such application.

I would very much appreciate reconsideration of the matter. Please take into consideration the irrevocable damage that will be caused to my practice and my existing clients. In the event that the Bar Council is still not minded to issue the sijil, I will be grateful if you will point out the specific provisions of the Legal Profession Act and reasons underpinning such decision.

Thank you.

Yours sincerely
—Sgd—

On 15 November 1994, the respondent replied as follows:

Bar Council

15 November 1994

Saudara DP Vijandran
Messrs Vijandran & Associates
Advocates and Solicitors
5th floor, Wisma Yakin
Jalan Masjid India
50100 Kuala Lumpur

Saudara,

Application for Sijil Annual 1995

The Bar Council has considered your letter dated 31 October 1994.

I regret to inform you that the council has decided to reject your appeal based on the following grounds:

1 *your conviction is a serious one and relates to conduct which in the council's view is conduct unbefitting an advocate and solicitor*; and

2 the fact that your appeal is pending before the High Court does not affect the matter. (Emphasis added.)

However, you are at liberty to apply to court pursuant to s 34 of the Legal Profession Act 1976.

Yang ikhlas
—Sgd—
Haji Sulaiman bin Abdullah
Setiausaha Kehormat
Majlis Peguam

The appellant then took out an originating summons on 21 December 1994, which, as we earlier observed, was dismissed by the learned judge who heard it. The appellant then appealed to this court. We heard and allowed his appeal on 17 October 1995. We also made an order directing the respondent to forthwith issue the appellant with the sijil annual he had applied for.

In the court below, a number of points were raised. These may be discerned from the carefully considered judgment of the learned judge. However, before us, arguments were confined to only two issues which, counsel on both sides agreed, lie at the heart of this appeal. The first turns upon the construction to be placed on s 33(1)(h) of the LPA upon which the respondent relied to justify its refusal to issue the sijil annual. The second concerns the respondent's claim to a much wider power to refuse the issuance of sijil annuals generally. It is based, among other matters, upon certain observations made by the Supreme Court in *Yip Shou Shan v Majlis Peguam* [1994] 3 MLJ 82. We will deal with each of these issues separately. In the course of doing so, we shall deal with the arguments presented by opposing counsel and with the reasons given by the learned judge for favouring the submissions made on behalf of the respondent.

Section 33(1)(h) of the LPA

As earlier observed, the respondent, both in the court below and before us, relied upon s 33(1)(h) to justify its refusal to issue the relevant sijil annual to the appellant. That section reads as follows:

> (1) Subsection (2) shall have effect with respect to an application for a Sijil Annual made by an advocate and solicitor —
>
> ...
>
> (h) after having had an order of committal or an order for the issue of a writ of attachment made against him.
>
> (2) In any of the circumstances mentioned in subsection (1), the applicant shall, unless a Judge or the Bar Council otherwise orders, give to the Bar Council not less than four weeks before his application for a Sijil Annual notice of his intention to apply therefor and the Bar Council may in its discretion —
>
> (a) issue a Sijil Annual; or
>
> (b) notify the applicant that he is required to make an application under section 34.

Section 34 of the LPA to which the respondent, in correspondence, drew the appellant's attention, reads as follows:

> (1) An advocate and solicitor who is required to make an application under this section or any advocate and solicitor who is dissatisfied with the refusal, neglect or delay in the issue to him of a Sijil Annual may apply to a Judge by originating summons for an order directing the Bar Council to issue him with a Sijil Annual.
>
> (2) A Judge hearing an application under this section may make an order for the payment of costs by or to either Bar Council or the applicant as he considers fair and reasonable.

A I do not think that we do any injustice to the arguments of counsel for the respondent if we summarize his arguments upon s 33(1)(h) in the following manner.

In any of the cases falling within one or more of the paragraphs to sub-s (1) of s 33, the respondent has a discretion to refuse to issue a sijil B annual. The instant appellant was convicted of an offence and sentenced to a term of imprisonment. He was therefore 'committed' to prison for his offence. The fact that execution of sentence was stayed is irrelevant since it does not wash away the conviction entered against him. This is, therefore, a case of an application made by an advocate and solicitor for a sijil annual — in the words of the section — 'after having had an order of committal C ... made against him'.

This argument found favour with the learned judge. When accepting it, he said:

> In my judgment, I agree with the view of the learned counsel for the D defendant that the said conviction comes within s 33(1)(h). That being the case, s 33(2) applies, in which event the provisions of s 32(1)(a) are restricted or negatived accordingly. Hence, under s 33(2), the defendant may in its discretion either: (a) issue the sijil; or (b) notify the plaintiff (as the applicant) that he is required to make an application under s 34. In the instant case, the defendant in the exercise of its discretion has notified the E plaintiff to make an application under s 34. There is no evidence before me that the exercise of this discretion by the defendant is wrong in law or in fact. This court should be slow in interfering with the exercise of the discretion by the defendant unless it has been shown to be manifestly or palpably wrong. Indeed, I am of the considered view that the exercise of discretion by the defendant has been correctly done in the instant case.

F There are two matters arising from this passage that call for comment. The first has to do with the meaning to be ascribed to the words 'order of committal'; the second has to do with the observation by the learned judge in relation to the exercise of discretion by the respondent and, in that context, the role of the High Court in an application made to it under s 34 G of the LPA. We shall deal with each of these in turn.

Does 'committal' include 'conviction'?

The phrase Parliament has employed when enacting s 33(1)(h) is: 'an order of committal ... made against him'. Let it be noted that the H legislature has not said 'after an order of conviction has been made against him'.

Now, when one speaks of an order of committal or a writ of attachment, it is usually in the context of the offence of contempt of court. Indeed, counsel on both sides are agreed that the phrase 'writ of attachment' appearing in that part of the LPA now under discussion does in fact refer I to contempt proceedings.

The differences between an order of committal and a writ of attachment have been alluded to in *Oswald on Contempt* (3rd Ed). Although it was last published in 1910, it remains the leading textbook upon the

subject and continues to be cited by other authors and by *Halsbury's Laws of England*. We cite the following passages that appear at pp 23–24 of that work:

> The origin of committal, as distinguished from attachment, is to be found in the practice of the Court of Chancery. Where attachment was issued, the offender was arrested by the sheriff, and, if the contempt required adjudication, was brought before the court and examined upon interrogatories, and, upon the contempt being proved, committed to the Fleet (a). In cases of assaulting or abusing a process server or speaking scandalous words of the court, an order was made for immediate committal, upon ex parte motion supported by an affidavit of the facts, and upon contempt in the face of the court an order for committal was made *instanter*, as at present. At one time attachment, followed by interrogatories, was made upon breach of an injunction, but the later practice, which is still followed, was to serve the accused with a notice of motion for committal, and to decide the question upon affidavits on both sides. Attachment was only issued against a party, whereas a stranger was committed. All the above contempts were 'special'. In the case of 'ordinary' contempts, namely, where a defendant made default in entering an appearance, or in putting in an answer, or in complying with an order to do an act, the plaintiff could attach him on proof of the default without any order. Committal was never bailable. Attachment on mesne process was bailable, but attachment by way of execution was not.
>
> The distinction between committal for contempt and attachment for contempt still exists, although for some practical purposes it may be taken to be abolished. The operation of an order for committal is more summary and expeditious (but perhaps more expensive if the officer has to journey after the offender) than that of a writ of attachment. In the case of committal, the person in contempt is taken, wherever he may be, under the order by the tipstaff of the court and lodged in Brixton or Holloway Gaol. In the case of attachment, the writ is executed by the sheriff's officer, and only runs into a particular county, enabling the culprit to shift from one bailiwick to another, and so evade the sheriff's officer; when caught, he is lodged in the county or other gaol of the place where the writ has been enforced. Wills J said [in *R v Lambeth County Court Judges and Jonas* (1887) 36 WR 475 at p 476] that there was no practical difference between committal and attachment. 'One was enforced by the tipstaff of the court, and the other by the sheriff. That is all the distinction, and it comes to little if anything'.

Borrie and Lowe's *Law of Contempt* (2nd Ed) which is a more modern work on the subject contains the following commentary at pp 324–325:

> Formerly, courts of common law and Chancery proceeded summarily in cases of criminal contempt either by attachment or by committal. The main difference between the processes lay in the means of execution; in the case of an attachment the person is seized by the sheriff's officer acting under a writ of attachment issued by leave of the court, but in the case of a committal the process was less formal and more direct, the offender being seized by the tipstaff acting under the orders of the judge. In *R v Lambeth County Court Judges and Jonas* (1887) 36 WR 475, Wills J commented that there was no other practical difference between a committal and an attachment: 'One was enforced by the tipstaff of the court, and the other by the sheriff. That is all the distinction, and it comes to little if anything.'

A However, it must be remembered that while either remedy was available in cases of criminal contempt, this was not true in cases of civil contempt where there were a number of technical rules determining which remedy was available in which circumstances. In these cases, the applicant chose his remedy at his peril and a wrong choice was fatal to the action.

B Happily, so far as England is concerned all such technicalities have been rendered academic since the current Rules of the Supreme Court provide by O 52 r 1 that the remedy of committal is available in *all* cases of contempt.

C The current rules do not refer to attachment and accordingly that remedy must be considered obsolete, for although theoretically it may still be possible to proceed by way of attachment since the remedy has not been expressly abolished, the procedure is unlikely to be adopted.

The technical differences between an order for committal and a writ of attachment were abolished in Malaysia after the Rules of the High Court 1980 ('the RHC') came into effect. As under the equivalent English rule of court, an order of committal may now be obtained in respect of all cases D of contempt under RHC O 52 r 1.

In *Twenty First Century Oils Sdn Bhd v Bank of Commerce (M) Bhd & Ors (No 1)* [1993] 2 MLJ 306 at p 309, Abdul Malek J cited a passage from a judgment delivered by him in an unreported case which also illustrates the technical meaning which the two phrases now under consideration E have acquired. That passage reads as follows:

> [Counsel] had referred me to pp 460 and 461 of Borrie and Lowe's *Law of Contempt* but on a cursory reading of the referred pages during the brief recess following the objection, I had discovered that the origin of the rule that a party in contempt cannot be heard or take proceedings in the same F cause until he has purged his contempt applied only where a *writ of attachment had been issued or where an order for committal had been made.* (Emphasis added.)

Despite all this, counsel for the respondent went on to suggest that the two phrases, 'an order of committal' and 'writ of attachment' appearing in G s 33(1)(h), ought not to be read *ejusdem generis.*

Now, when Parliament enacts a law in which it uses technical legal language, then, unless a contrary intention expressly appears in the enactment or such an intention may be necessarily implied, it is taken as using that language in its technical legal sense. Where an express contrary intention is intended, that is to say, where Parliament expressly intends to H give a different meaning — either a wider or more restricted meaning — to technical legal language, it is not unusual to find a specific definition of the particular term within the Act. In the absence of such an express provision, there must be the clearest implication that the legislature did not intend to give the words used their technical legal meaning.

I However, in the case of the LPA, we see no definition, whether wide or narrow, of the term 'committal' or the phrase 'order of committal'. Neither are we able to discern any necessary implication that Parliament intended to convey any meaning to the words used other than their

technical legal meaning. In these circumstances, a court must interpret the terminology appearing in para (h) to sub-s (1) of s 33 in its legal sense as used and understood in the context of the general law as it stood at the time the LPA was passed. Counsel for the respondent, however, argued that we are not permitted to adopt this method of construction. But we find that both principle and authority are against him.

The general principle that governs the present case is fairly well expressed in the following passage at p 833 of *Statutory Interpretation* (2nd Ed) by Francis Benion:

> If a word or phrase has a technical meaning in a certain branch of law, and is used in a context dealing with that branch, it is to be given that meaning, unless the [sic] contrary intention appears.
>
> Each branch of law has its own jargon. If an enactment is dealing with a particular branch, and uses one of these technical expressions, the inference is almost irresistible that it has its usual meaning. This will not be displaced by showing that some popular misconception accords it a different meaning.

The authorities that support this principle are legion and it is quite unnecessary for us to deal with all of them here. Suffice that we quote from three cases.

In *Reserve Bank of India v Peerless General Finance and Investment Co Ltd* AIR 1987 SC 1023 at p 1042, Chinnappa Reddy J stated a principle of cardinal importance in the following words:

> Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual.

In *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 at p 580, Lord Macnaghten when considering the meaning to be given to the word 'charity' appearing in a taxing statute, said:

> In construing Acts of Parliament, it is a general rule, not without authority in this House (*Stephenson v Higginson* 3 HLC 686) that words must be taken in their legal sense unless a contrary intention appears.

In *Davies & Jones v State of Western Australia* (1904) 2 CLR 29 at p 42, Griffith CJ when dealing with the word 'domicil' appearing in the Administration Act 1903 of Western Australia, said:

> It is a general rule of construction that technical terms used in a statute should receive their technical meaning unless it is clear from the context, or the subject matter, that the legislature has used the term in a popular and more enlarged sense. Conversely, the context or subject matter may clearly indicate that the legislature has used a word in a limited as opposed to the popular sense.

We are mindful that these pronouncements were made in the context of particular words appearing in particular statutes. But that apart, the principle of construction that has been stated in these cases is of universal application

A and its content has not been denuded in any way by the difference in the words that fell for interpretation.

It is quite plain, as earlier observed, that the expressions 'order of committal' and 'writ of attachment' are, in technical peculiarity, associated with the law of contempt. In our judgment, they ought therefore to be read
B in that context, namely, as referring to a situation in which an advocate and solicitor has been punished for committing contempt of court.

The relevant law, at the time the LPA was passed, that governed the making of orders in cases of contempt of court, encompassed both orders of committal and writs of attachment. The former were authorized by
C para 9(1) of the Third Schedule to the Subordinate Courts Act 1948. It is in force even today, and it reads as follows:

> *Power to commit to prison* for such period, not exceeding six months, and in such manner as may be prescribed by rules of court, *any person who wilfully disobeys or fails to comply with any order of the court* ... (Emphasis added.)

D The relevant rule of court under which this power was exercisable by a subordinate court was O 38 of the Subordinate Courts Rules 1950.

The latter category, namely, writs of attachment, were governed by O 44 of the Rules of the Supreme Court 1957, which were based upon the English Rules of the Supreme Court 1883. That order was significantly
E headed as 'Writ of Attachment' and r 2 thereof provided as follows:

> No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued. Such writ shall be in accordance with Form 16.

For completeness, we note that Form 16 referred to in r 2 adverts to the
F commission of a contempt by the person against whom the writ is directed.

In *Re G's Application for a Committal Order* [1954] 1 WLR 1116 at p 1117, Vaisey J, when restating the proposition that a litigant in person could not, under RSC O 44 r 2, move for a writ of attachment, delivered a short judgment that is of assistance to the present case. This is what he
G said:

> It is a well-settled rule of this court that *a party in person cannot move for a writ of attachment, which is precisely the same, in its nature, as moving for a committal order.* The reason is that a motion to commit is, as Lord Denman CJ in *ex p Fenn* 2 Dow PC 527 said of an application for an attachment, 'in the nature of a criminal information' and, as Lord Denman went on to say, 'the
H court always requires that such a motion should be made by a gentleman at the Bar, in order that it may have the sanction of that gentleman's name for the application. To you, therefore, who apply in person, the court cannot grant a rule for an attachment'. In *ex p Liebrand* [1914] WN 310, the applicant appeared in person and moved for a rule nisi for a writ of attachment for contempt of court; and Lawrence J said that 'the court
I would not hear an application of this sort by an applicant in person'.
>
> The only difference between those two cases and this case is that the application here is for committal for contempt, *but it is a difference without significance.* In either case, the application is not only, as Lord Denman CJ,

> in *ex p Fenn*, said 'in the nature of a criminal information,' but it is a report to the court of information on which the court is asked to uphold its own honour and protect its own dignity, and that is a matter on which the court may not be addressed by anyone except counsel at the Bar. Accordingly, the applicant in the present case cannot be heard, and his motion must be dismissed. (Emphasis added.)

It is plain from the several authorities which we have cited that there is no difference in substance between an order for committal and a writ of attachment. They were issued in respect of the same subject matter, namely, the offence of contempt of court. Parliament, when referring to both of them in s 33(1)(h) was no doubt contemplating the case of an advocate and solicitor who had been punished for committing contempt of court. And it is no surprise that such an advocate and solicitor should be placed within the category of other members of the legal profession to whom the section has been made applicable. For, it is only fair and just that an advocate and solicitor who has been punished for contempt be not permitted to appear before a court, save and except for very good reasons. And the power to withhold the sijil annual of such an advocate and solicitor, when properly exercised by the respondent, achieves that objective.

There is another reason that justifies the conclusion we have arrived at in respect of this part of the case. It is that the two expressions under discussion should be construed *noscitur a sociis*. The content of this rule of construction, which is a rule wider than that housed in the maxim *ejusdem generis*, has been explained by *Maxwell on Interpretation of Statutes* (11th Ed) at p 321 as follows:

> When two or more words which are susceptible of analogous meaning are coupled together *nosciuntur a sociis*. They are understood to be used in their cognate sense. *They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general.* (Emphasis added.)

The effect of the principle is that a word or phrase appearing in a statute must fall to be judged by the company in which it is to be found. The expression 'order of committal' therefore takes its colour from the expression 'writ of attachment' to which it is joined by the conjunction 'or'.

The suggestion by the respondent that the words 'order of committal' should be widely construed so as to include a conviction cuts across well-settled principles of construction and does violence to the language used by Parliament. We have, therefore, no hesitation whatsoever in rejecting it.

It follows from what we have said thus far that the learned judge erred in accepting the respondent's submission on this point and that the construction he placed upon s 33(1)(h) is wrong.

We now turn to comment upon the second matter that arises from the passage in the judgment of the learned judge which we reproduced earlier. It has to do with the nature of the jurisdiction that is vested in the High Court by s 34 of the LPA.

The court's function under s 34 of the LPA

In deciding the nature of the power that is exercisable by the High Court on an application made to it under s 34, it is important to have regard to the language of that section. To recapitulate, the first subsection entitles an advocate and solicitor, in the circumstances adumberated by the section, to apply to a judge of the High Court for an order directing the Bar Council to issue him with a sijil annual. Subsection (2) merely goes on to deal with the question of costs. There is, we note, no suggestion in the section of an appeal against, or a review of, the decision of the Bar Council. A reading of the section, therefore, leaves us in no doubt that Parliament intended to confer upon a judge of the High Court an original jurisdiction upon the question whether a sijil annual ought to be issued in a particular case.

When exercising that original jurisdiction, the judge is in no way fettered by any prior decision reached upon the matter by the respondent. He is not confined to merely reviewing a decision made by the respondent. In deciding whether he ought to direct the respondent to issue a sijil annual, the judge must consider all the material before him and decide whether the particular applicant should have a sijil annual. In arriving at his decision, he is in no way fettered by any prior exercise of discretion by the respondent; for he does not sit as an appellate judge. He is certainly entitled to take into account any reasons the respondent may advance for taking the decision it did. But he is in no way bound by them.

Further, the relief prescribed by the section is not to be treated as one or more of the prerogative orders, so that the principles governing the grant or refusal of such orders have no direct relevance to an application made under s 34. What is of paramount importance is that the section provides for a special stautory remedy that is to be granted according to the circumstances of each case.

We derive analogical support for the view we have expressed upon the function of a judge under s 34 of the LPA from the judgment of Edgar Joseph Jr SCJ in *Seloga Jaya Sdn Bhd v Pembenaan Keng Ting (Sabah) Sdn Bhd* [1994] 2 MLJ 97 where he referred to the following passage in the judgment of Chan Sek Keong J in *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1991] 2 MLJ 311 at p 313:

> The situation in O 55 is analogous to 'appeals' from the decisions of the registrar of the High Court to the judge-in-chambers. In such appeals, the judge-in-chambers is not exercising 'appellate' jurisdiction in the same sense when it hears appeals from the district court. This view is consistent with the rule that an appeal from the registrar of the High Court to the judge-in-chambers is by way of an actual rehearing of the application and the judge treats the matter afresh as though it came before him the first time ...

Similarly, a High Court, when faced with an application under s 34 of the LPA, must treat the matter as originating before it and not as being

determinative of the question whether the Bar Council had correctly exercised its discretion in refusing to issue a sijil annual.

We have adverted to these matters because a careful reading of the learned judge's judgment has left us convinced that it is certainly open to the interpretation that he considered his role as being confined to reviewing the exercise of the respondent's discretion in refusing to issue a sijil annual to the appellant. To this extent he was wrong in the approach he took; for he failed to appreciate the nature of the jurisdiction that he was called upon to exercise. He ought to have come to his own conclusion on the facts and circumstances of the case without in any way being influenced by the prior exercise of discretion by the respondent.

With that, we now turn to consider the respondent's claim to a wider power for refusing to issue the appellant with a sijil annual.

The wider power

In arguing that the respondent has a wider power to refuse sijil annuals generally, counsel drew support from two sources. The first is s 57(c) of the LPA; while the second is the judgment of the Supreme Court in *Yip Shou Shan*. We shall consider each of these.

Section 57(c) appears as part of a provision which reads as follows:

> Specific powers of the Bar Council.
>
> Without prejudice to the general powers conferred by section 56 or the specific powers to make rules conferred by any other provisions of this Act the Bar Council shall have power —
>
> (a) to make rules to provide for all matters not expressly reserved to the Malaysian Bar in general meeting whether the same be expressed amongst its powers or not;
>
> (b) to answer questions affecting the practice and etiquette of the profession and the conduct of members;
>
> (c) to take cognizance of anything affecting the Malaysian Bar or the professional conduct of its members and to bring before any general meeting of the Malaysian Bar any matter which it considers material to the Malaysian Bar or to the interests of the profession and to make any recommendations and take any action as it considers fit in relation thereto;
>
> (d) to examine and if it considers fit to report upon current or proposed legislation and any other legal matters;
>
> (e) to represent members of the Malaysian Bar or any section thereof or any particular member in any matter which may be necessary or expedient;
>
> (f) with the prior approval of the Malaysian Bar in general meeting, to award prizes and scholarships for students of law and to lay down the conditions for their award;
>
> (g) to appoint officers, clerks, agents and servants for permanent, temporary or special services as it may from time to time consider fair and reasonable and to determine their duties and terms of service;

A (h) to purchase, rent or otherwise acquire and furnish suitable premises for the use of the Malaysian Bar;

(i) to communicate from time to time with other similar bodies and with members of the profession in other places for the purpose of obtaining and communicating information on all matters likely to be beneficial or of interest to members;

B (j) to institute, conduct, defend, compound or abandon any legal proceedings by and against the Malaysian Bar or its officers or otherwise concerning the affairs of the Malaysian Bar and to compound and allow time for payment or satisfaction of any debts due or of any claims or demands made by or against the Malaysian Bar;

C (k) to invest and deal with any moneys of the Malaysian Bar from time to time in securities authorised for the investment of trust funds by any written law;

(l) from time to time to borrow or raise money by bank overdraft or otherwise by the issue of debentures or any other securities founded or based upon all or any of the property and rights of the Malaysian Bar

D or without any such security and upon such terms as to priority or otherwise as the Bar Council shall consider fit; and

(m) to exercise all such powers, privileges and discretions as are not by this Act expressly and exclusively required to be exercised by the members of the Malaysian Bar in general meeting.

E Section 57 appears under Pt V of the LPA which is generally headed 'Malaysian Bar' and more particularly under the specific subheading 'Powers of the Council'. Part V deals, among other matters, with the establishment of the Malaysian Bar, the creation of the Bar Council, its proceedings and the election of office bearers. Section 56 to which reference is made by s 57 reads as follows:

F

56 Powers and acts of Bar Council.

The management of the Malaysian Bar and of its funds shall be vested in the Bar Council; and all the powers, acts or things which are not by this Act expressly authorised, directed or required to be exercised or done by the Malaysian Bar in general meeting may, subject to this Act or any rules made

G thereunder or any resolution passed from time to time by the Malaysian Bar in general meeting, be exercised or done by the Bar Council:

Provided that no such resolution of the Malaysian Bar shall invalidate the previous exercise of any powers or the previous doing of any act or thing by the Bar Council which would have been valid if the resolution had not been passed.

H The Bar Council is a creature of statute. It has only those powers that are conferred upon it by the LPA. Whenever its actions are challenged, the onus lies upon it to demonstrate under what provision of the LPA it purports to act.

I As a creation of statute, the Bar Council has been conferred with certain powers to manage and administer its affairs. These are all general in nature and they are to be found in Pt V of the LPA, and more particularly in ss 56 and 57 thereof. As was put to counsel in the course of argument, ss 56 and 57 of the LPA are to the Bar Council what a

memorandum of association is to a limited company — nothing less, nothing more. A

Apart from these general powers to administer itself, there is vested in the Bar Council the very limited power to licence members of the legal profession who have met the requirements touching upon the state of their clients' accounts and have complied with certain other formalities. This B licensing power is to be found in Pt III of the LPA under which appear a gamut of sections including ss 32, 33 and 34. The Bar Council used to have the power to discipline members of the Bar, but that power has, by an amendment made to the LPA been now vested in the Disciplinary Board. The only other area in which the Bar Council has any disciplinary power is to be found in s 88A of the LPA which appears to be redundant C in view of the provisions of s 94(4), as the latter is a verbatim reproduction of the former, save for the identity of the authority that is empowered to make the relevant orders.

Having read s 57(c) with care, we must confess our inability to see what it has to do with the respondent's refusal to issue a sijil annual to the D appellant. Section 57(c) is most general in nature. When read in its widest context and given a most benevolent interpretation, it empowers the Bar Council to take cognizance of, inter alia, anything affecting the professional conduct of its members and to take any action it considers fit in relation thereto. As against that we have the specific provisions of ss 32, 33 and 34 E which deal with the particular subject of issuing sijil annuals.

In these circumstances, we apprehend that the correct approach to the question of interpretation is to treat the general provision as having been displaced by the more specific. It is expressed in the Latin maxim *generalia specialibus non derogant* which is applied thus. Where an Act of F Parliament contains a general provision which, when given a literal interpretation, covers a situation in respect of which a specific provision exists elsewhere in the enactment, the general provision is presumed to give way to the more specific provision.

This approach to the construction of a statute has been rationalized by Prof Pearce in his work entitled *Statutory Interpretation in Australia* G (1st Ed) as follows:

> It is common sense that the draftsman will have intended the general provisions to give way should they be applicable to the same subject matter as is dealt with specifically. The draftsman often indicates his intention that this should be so by the inclusion of such words as 'subject to this Act' in H a general provision. But these words are included more by way of abundant caution as the overriding idea that the Act should be read as a whole has the effect of making all provisions subject to one another.
>
> *The generalia specialibus rule should, it is suggested, be observed more strictly in the interpretation of provisions in a particular Act than in the case of separate enactments.* In the latter circumstance it may well be that the draftsman did I not consider the effect of the competing Acts. When a single document is being considered, however, the draftsman will be more likely to have relied on the rule. (Emphasis added.)

A We think that there is merit in the suggestion made by Prof Pearce to which we have lent emphasis in the foregoing passage.

Applying the principle to the present case, we have here the very general words of s 57(c) which, when read literally and liberally, would appear to support the existence of a power in the respondent to refuse to
B issue a sijil annual to an advocate and solicitor to whom none of the eight paragraphs of s 33(1) apply. Opposed to that, we have the very specific terms of ss 33 and 34. Having regard to the way in which the LPA is drafted, we are of the view that the general words of s 57(c) must give way to the specific provisions of s 33.

C But that is not the end of the matter. For, the respondent additionally supports its claim to the wider power in reliance upon the decision of the Supreme Court in *Yip Shou Shan*. The passage in the judgment of Eusoff Chin SCJ (now Chief Justice of the Federal Court) upon which the respondent relies appears at [1994] 3 MLJ 82 at p 87 and reads as follows:

> D We are of the view that s 32 of the Act imposes a duty on the Bar Council to process and scrutinize every application for a sijil annual. It is the Bar Council's paramount duty to ensure that only an honest, trustworthy, fit and proper advocate and solicitor should be allowed to practise. Any act of dishonesty on the part of an advocate and solicitor would bring the Bar Council and the legal profession into disrepute. The issuance of a sijil annual by the Bar Council is its recommendation to the registrar that such
> E advocate and solicitor is a fit person to be issued a practising certificate under s 29 of the Act. If the Bar Council finds that an advocate and solicitor has failed to keep proper accounts of all moneys received by his firm and therefore he cannot deliver a clean accountant's report, the Bar Council is entitled to refuse to issue a sijil annual and consequently will not recommend to the registrar for the issuance of a practising certificate to the advocate and
> F solicitor concerned. *It is, therefore, clearly misconceived to interpret the role of the Bar Council as merely a rubber-stamping process, it having no discretion to refuse to issue a sijil annual in circumstances where clearly it should not be issued in the public interest.* To agree with the appellant's argument would render s 34 *otiose* in its application to s 32, bearing in mind that s 32 is expressly subject to s 34. (Emphasis added.)

G Counsel, in the course of his argument, laid stress upon the sentence to which we have lent emphasis. The burden of his submission is that there is a duty on the part of the Bar Council to withhold a sijil annual in particular cases where the public interest so demands. In the discharge of this duty, the respondent has, counsel contends, a residual power to refuse
H to issue a sijil annual in cases where in the public interest a sijil ought not to be issued. These submissions were accepted by the learned judge in the court below.

Having subjected the judgment of the Supreme Court in *Yip Shou Shan*'s case to a careful reading, we are entirely satisfied that counsel has
I misunderstood the context in which the words he relied on were spoken. With respect, the reference to the public interest in the sentence we have placed emphasis upon in the foregoing passage was made in the context of the inability of an advocate and solicitor to deliver a 'clean' accountant's

certificate in respect of his clients' account. That this is indeed so is made amply clear by the preceding sentence in that passage which we now reproduce *ex abundanti cautela*. It reads:

> *If the Bar Council finds that an advocate and solicitor has failed to keep proper accounts of all moneys received by his firm* and therefore he cannot deliver a clean accountant's report, *the Bar Council is entitled to refuse to issue a sijil annual* and consequently will not recommend to the registrar for the issuance of a practising certificate to the advocate and solicitor concerned. (Emphasis added.)

The passage relied upon by counsel may now be seen not to provide him with the comfort he thought it did. The error in the reasoning of counsel in respect of the contextual statement was not sufficiently addressed by the learned judge when he considered himself bound by the judgment of the Supreme Court. This case shows the danger of counsel placing reliance on one or two sentences appearing in a judgment without reading them in the context of what had been said earlier or later in the same judgment.

For the reasons we have given, it is apparent that the respondent's claim to a wider power cannot succeed. Indeed, there is no such wider power.

The case then comes to this. The appellant's accounts were all admittedly in order. Yet the respondent refused to issue him with a sijil annual for a reason entirely untenable in law and upon the basis of a non-existent power. The reliance by the respondent upon the conviction of the appellant to refuse him a sijil annual had the effect of disciplining the appellant by a body that distinctly lacked that power. For, in substance, the effect of the respondent's refusal had the effect of suspending the appellant from practising his profession. It is a case where the provision in a statute was used for a collateral purpose, that is to say, for a purpose other than the purpose for which it was conferred. To put it plainly, ss 32 and 33 confer a licensing power. The respondent used that power as a means of disciplining the appellant by suspending him from practice without having resort to — and indeed, by by-passing — the specific provisions in the LPA that have set up the machinery and prescribed the procedure for the discipline of advocates and solicitors.

Where a statutory power is used for a collateral purpose, the law terms it as an abuse of power. The consequences of such an abuse is to render the decision arrived at a nullity. In *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 at p 146, Suffian LP, in the context of the provisions of the National Land Code 1965 and after undertaking an examination of the relevant English authorities said:

> English cases are of course decisions on the peculiar words used in the Town and Country Planning Act, whereas here we are concerned with the peculiar words used in the National Land Code, but nevertheless I am of the opinion that English cases afford principles that may be followed here. What are these principles? They are:

A

1 the approving authority does not have an uncontrolled discretion to impose whatever conditions it likes;

2 the conditions, to be valid, must fairly and reasonably relate to the permitted development;

3 the approving authority must act reasonably and planning conditions must be reasonable; and

B

4 *the approving authority is not at liberty to use its power for an ulterior object, however desirable that object may seem to it in the public interest.*

Applying these principles to the present case, it is plain, in my judgment, that the Committee does not have the power it claims to have. The condition which the applicant objected to does not relate to the permitted development, C is unreasonable, and is used for an ulterior object, the object being to bring developed land into line with newly alienated land as to which, we are told, since the war only leases, not titles in perpetuity, are granted. However desirable this object may seem to the Committee, it has no power under the law to achieve it in the way used here. (Emphasis added.)

D In *Westminster Corp v London and North Western Rly Co* [1905] AC 426 at p 439, Lord Lindley put the proposition in clearer terms when he said:

Where a person is authorized by statute or by the common law to do what, apart from such authority, would be unlawful, eg to commit a trespass, and the authority is conferred for some distinct and definite purpose, and is abused by being used for some other and different purpose, the person E abusing it is treated as a wrong-doer from the first, and not only as a wrong-doer in respect of what can be proved to have been an excess of his authority. It is presumed against him that the abuse of his authority shows an intention from the first to commit an unlawful act under colour of a lawful authority. This general principle was established in the well-known case known as the *Six Carpenters' Case* (1610) 8 Rep 146a, on which there F is an instructive comment in 1 *Smith's Leading Cases* (10th Ed) at p 127.

Applying these principles to the factual matrix that is present in the instant case, it cannot be gainsaid that the respondent did indeed abuse its power and authority when it refused the appellant his sijil annual. There is no doubt that it acted out of the highest of motives. But that does not detract G an iota from the conclusion that it abused the power conferred upon it.

For the reasons we have given, we had no alternative but to allow the appeal and to set aside the order made by the learned judge. The respondent was, as stated earlier, directed to forthwith issue the appellant with the sijil annual he had applied for. The deposit lodged by the appellant was H ordered to be refunded to him. Because the Bar Council does not, as a matter of policy enforce orders of costs made in its favour, we decided that there shall be no order as to costs in respect of this appeal and in the court below.

Appeal allowed.

I

Reported by Azra Azman